ANG CHIEW CHOON v. REG.

[A. Cr. J. (Whyatt C.J.) May 17, 1957]

[Singapore — Magistrate's Appeal No. 247 of 1956]

Penal Code, s. 204 — Secreting a police report — Motive behind the surreptitious removal of report — Whether necessary to prove.

The case for the prosecution was that the appellant, who at the material time was an Inspector attached to the Narcotics Branch of the Criminal Investigation Department, made a written report on the 10th June 1955 of a raid which he had conducted on premises in which opium utensils were found and subsequently removed the report from the Malay Report Book at the Central Police Station with the intention of preventing it being produced or used as evidence in Court.

The appellant substituted a new report. But the new report was not endorsed by the officer in charge of the Report Book.

The question in this appeal were (1) whether the evidence of the prosecution was sufficient to establish a *prima facie* case or whether it merely raised a case of grave suspicion; (2) if the appellant surreptitiously removed the report, what was his intention in doing so? and (3) whether it was necessary for the prosecution to prove that the motive behind the surreptitious removal of the report was to further a plot to smother a prosecution.

Held (1) on the evidence the prosecution had clearly proved that the report in question which was securely filed in the Malay Report Book was subsequently removed by the appellant;

(2) the very fact that it was carried out surreptitiously points strongly to the conclusion that the person responsible for the removal and substitution had a sinister and not an innocent intention;

(3) it is not necessary for the prosecution to prove that the motive behind surreptitious removal of the report was to further a plot to smother a prosecution.

Case referred to:—

(1) *R. v. Gangaram Tukaram* (1912) 14 B.L.R. 1163.

MAGISTRATE S APPEAL.

K. E. Hilborne for the appellant.

Mary Lim (Crown Counsel) for the respondent.

Whyatt C.J. : — The appellant was convicted by the District Judge of secreting a police report with intent to prevent it being produced or used as evidence contrary to section 204 of the Penal Code and sentenced to eight months imprisonment. At the hearing of the appeal a large number of issues, some relating to questions of construction, others to questions of fact, were raised, but in my opinion the only question of substance in this appeal is the broad issue whether the evidence of the prosecution was sufficient to establish a *prima facie* case or whether it merely raised a case of grave suspicion.

The case for the prosecution was that the appellant, who at the material time was an Inspector attached to the Narcotics Branch of the Criminal Investigation Department, made a written report on the 10th June 1955 of a raid which he had conducted on premises in which opium utensils were found and subsequently secretly removed the report from the Malay Report Book at the Central Police Station with the intention of preventing it being produced or used as evidence in Court. There can be no doubt at all, in my view, if the evidence of the prosecution established these facts, that an offence against section 204 of the Penal Code has been committed.

It is necessary, therefore, to examine in some detail the evidence called by the prosecution to see whether it was sufficient to justify a conviction in this case. In the first place it was proved that a report, (which came to be known in the case as Exhibit P3), was signed by the appellant and it is reasonable to infer from its contents that it was written by the appellant on the 10th June 1955 shortly after the raid. Secondly, it was proved that this report was taken from the Narcotics Branch to the Central Police Station the same day. When it reached the Central Police Station, Lance-Corporal 2360, Abdul Kadir by name, was doing charge room duty. The report was handed to him, and he thereupon wrote on the back of it "Lance-Corporal 2360 says at 11.05 p.m. 10th June 1955 Detective 3110 handed report of offence stated in report." He then proceeded to paste the report into the Malay Report Book. It was, therefore, clearly established by the prosecution that the document which is the subject matter of this charge was safely and securely filed in the Malay Report Book at the Central Police Station on the 10th June 1955. Nearly twelve months later, on the 18th May 1956, this same document was handed to the Private Secretary of the Commissioner of Police by a woman named Alice Lim Chew Har with whom the appellant had been living, he says as his mistress, she says as his wife. There was a sharp conflict of evidence as to how this woman got possession of this document. She alleged that the appellant gave it to her sometime in June 1955, telling her to burn it, while he alleged that she stole it from his car in May 1956. As the learned District Judge pointed out, however, it is, in one sense, immaterial whether this woman was given this document by the appellant or whether she stole it from his car; the indisputable fact is that she handed it physically to the Commissioner's Private Secretary on the 18th May 1956.

The prosecution, therefore, clearly proved that this report which, as I have said, was securely filed in the Malay Report Book by means of sticking paste on the night of the 10th June 1955 was subsequently removed, or more accurately torn out, of the Book, and later handed to the Commissioner's Private Secretary by the appellant's mistress. Who had torn it out? The prosecution were not able to call an eye-witness to say that he saw it being torn out — it would be very surprising if they had — and therefore they had to rely

upon inference and they invited the learned District Judge to draw the inference that it was the appellant or someone acting on his instructions, who had surreptitiously removed this important document from the Malay Report Book. The learned District Judge drew this inference and it cannot be said, in my view, that the inference was not a reasonable and proper inference to draw in the circumstances.

The next question is, if the appellant surreptitiously removed the report, what was his intention in doing so? Was it, as the prosecution allege, with the intention of preventing it being produced or used as evidence or was his act consistent with some innocent hypothesis? It was strenuously contended on behalf of the appellant that the fact that a new report, similar in its terms, was substituted for the old report shows that the appellant removed the old report with an innocent intention or at any rate, it is consistent with an innocent intention, and in support of this argument, counsel for the appellant referred to the case of *The Emperor v. Gangaram Tukaram*[1]. In that case a police officer, having drawn up a document in the course of his investigations, subsequently destroyed it because it was disfigured by interlineations and substituted a new fair document, textually the same, in its place. The police officer was charged under section 204 of the Indian Penal Code (which corresponds to section 204 of our Penal Code) but the Court acquitted him, pointing out that there was no suggestion of dishonest or fraudulent intention and that the first document should be regarded merely as rough notes designed for the preparation of the fair original document. Similarly, in the present case, so the appellant contends, the facts are consistent with the view that the first report was removed because it was disfigured by alterations and in support of this contention he points to the fact that there are certain ink amendments in the typewritten script of the report. The two cases are, however, clearly distinguishable. In the Indian case the destruction of the old document and the substitution of the new one was done quite openly and without any attempt at concealment. In the present case the original report was removed from the Report Book at the Central Police Station surreptitiously without the officer in charge of the Book knowing anything about it; furthermore the new report was not endorsed by the officer in charge of the Report Book before it was filed, thus showing that it was substituted without the officer in charge being aware of the fact. If the process of removal and substitution was an innocent operation, why this secrecy? The very fact that it was carried out surreptitiously points strongly, I might almost say irresistibly, to the conclusion that the person responsible for the removal and substitution had a sinister and not an innocent intention.

The prosecution led evidence to show that the appellant was plotting with the person found on the premises at the time of the raid to smother the prosecution and it might be said that the motive of the appellant, as distinct from his intention, in secretly removing the original report was to further this plot. Counsel for the appellant contended that the evidence of this plot came from a biassed source and in any case, if there was such a plot, it would have been necessary for the appellant not only to remove the original report but also to destroy the carbon copy of the report typed on the back of the search warrant which in fact he did not do. There is much force in both of these criticisms and if it were necessary for the prosecution to establish such a plot in order to prove this charge, I would agree that the evidence falls short of what would be required. But it is not necessary for the prosecution to prove that the motive behind the surreptitious removal of the report was to further a plot to smother a prosecution; all that they have to prove is that the intention of the person surreptitiously removing the report was to prevent it being produced or used as evidence in Court. In my view the learned District Judge was entitled to infer from the facts established in evidence, first, that the report was removed by the appellant or someone acting on his behalf, secondly, that it was removed surreptitiously, and thirdly, that the reason it was removed surreptitiously was because it was intended to prevent it being produced or used as evidence in Court. It follows, therefore, in my judgment that the prosecution established a *prima facie* case and the learned District Judge rightly called on the appellant to make his defence.

So far from rebutting the *prima facie* case or even throwing doubt on it, the evidence given by the appellant could, I think, have left learned District Judge in no doubt that the appellant was a liar. His version was that after writing out the original report, he did not send it to the Central Police Station for pasting into the Malay Report Book but kept it in his possession in a miscellaneous file. This story cannot be reconciled with the undoubted fact that the report bears an endorsement in the handwriting of Lance-Corporal Abdul Kadir, the officer in charge of the Report Book on the relevant date, stating the time and date the report was received by him at the Central Police Station. The learned District Judge in my opinion was fully justified in rejecting the evidence of the defence and consequently the attempt to rebut the prosecution's *prima facie* case rightly failed. In my judgment, the appellant was properly convicted and the appeal is accordingly dismissed.

Appeal dismissed.

Solicitors: *Hilborne & Co.*